STATE OF MICHIGAN

COURT OF APPEALS

LIVONIA HOSPITALITY CORP., d/b/a COMFORT INN OF LIVONIA,

Plaintiff-Appellant,

v

BOULEVARD MOTEL CORP., d/b/a QUALITY INN,

Defendant/Third-Party-Plaintiff Appellee,

and

CHOICE HOTELS,

Third-Party-Defendant.

UNPUBLISHED
October 20, 2005

No. 256203
Wayne Circuit Court
LC No. 03-311775-CZ

Before: Owens, P.J., and Fitzgerald and Schuette, JJ.

PER CURIAM.

Plaintiff, Livonia Hospitality Corp., d/b/a Comfort Inn of Livonia, appeals as of right from an order granting summary disposition in favor of defendant, Boulevard Motel Corp., d/b/a Quality Inn, in this action for breach of contract. We affirm.

I. FACTS

Plaintiff and defendant, as franchisees, have independent franchise agreements with third-party defendant Choice Hotels. Plaintiff's claims are predicated on an agreement allegedly made in Michigan in 1994 between plaintiff and defendant ("the alleged Agreement" or "the Agreement"), whereby defendant agreed not to convert to a Comfort Inn, but instead convert to a Quality Inn. Plaintiff claims in essence that defendant breached the alleged Agreement by thereafter seeking to change its hotel to a Comfort Inn in 2003.

Plaintiff is a Michigan corporation that operates the Comfort Inn in Livonia, Michigan. Defendant has been in business since approximately 1990. Defendant is a foreign corporation that operates a hotel in Plymouth, Michigan. In 1994, defendant applied with third-party defendant, Choice Hotels, to change its existing Signature Inn to a Comfort Inn. Plaintiff made a

formal objection to defendant becoming a Comfort Inn on July 12, 1994. Plaintiff commissioned an impact study, which showed that defendant's proposed Comfort Inn would have an incremental impact of four points on plaintiff in the most severe year. Plaintiff requested the president of Choice Hotels, Robert Hazard, to review this matter and also requested the opportunity to discuss, among other things, the option of plaintiff's Signature Inn becoming a Quality Inn rather than a Comfort Inn.

A Memorandum dated October 24, 1994 ("the 1994 Memorandum") recites the following concessions made by Choice Hotels to defendant for "switching from Comfort to Quality": "Choice Hotels pays for defendant's signage; 0% fees until Quality Lovonia [sic] is out of system; 3% royalties for life, and no marketing fees during the first year and no marketing fees during the second year unless defendant achieves or exceeds the performance." On November 1, 1994, defendant entered into a franchise agreement with Choice Hotels for the operation of a Quality Inn.

On April 3, 2003, defendant entered into a franchise agreement with Choice Hotels for the operation of a Comfort Inn. On April 14, 2003, plaintiff filed a two-count complaint against defendant for breach of contract and equitable estoppel. According to the complaint, in 1994, defendant, which operated the Signature Inn, filed a petition with Choice Hotels to convert its Signature Inn to a Comfort Inn. Plaintiff allegedly objected to defendant's application for a Comfort Inn franchise and performed an impact study at plaintiff's cost in September 1994, which showed that the conversion of defendant's hotel to a Comfort Inn hotel would have a significant financial impact on plaintiff. The complaint requested that the trial court grant a permanent injunction enjoining defendant from converting to a Comfort Inn in violation of the alleged Agreement and, in the alternative, award plaintiff damages caused by defendant's breach of "the Agreement" in the amount in excess of $25,000.

Defendant moved for summary disposition pursuant to MCR 2.116(C)(10), and the trial court granted summary disposition under MCR 2.116(C)(8). Plaintiff now appeals as of right arguing primarily that the trial court erred in ruling that the statute of frauds bars plaintiff's claim because there was no written agreement between the parties.

II. STANDARD OF REVIEW

A trial court's decision on a motion for summary disposition is reviewed de novo. *Dressel v Ameribank*, 468 Mich 557, 561; 664 NW2d 151 (2003). Similarly, "this Court reviews de novo questions of law such as whether the statute of frauds bars enforcement of a purported contract." *Kelly-Stehney & Associates, Inc v MacDonald's Indus Prods*, 265 Mich App 105, 110; 693 NW2d 394 (2005), quoting *Zander v Ogihara Corp*, 213 Mich App 438, 441; 540 NW2d 702 (1995).

In the instant case, defendant moved for summary disposition pursuant to MCR 2.116(C)(10), but the trial court granted summary disposition under MCR 2.116(C)(8). A review of the pleadings, the court's ruling at the motion hearing, the order, and the lower court file reveals that the trial court and parties relied upon materials beyond the pleadings. Also, both parties briefed the issue as if summary disposition was granted under MCR 2.116(C)(10). Thus, summary disposition pursuant to MCR 2.116(C)(10) was proper. Although the court granted summary disposition to pursuant to MCR 2.116(C)(8), the court nevertheless reached the correct

result. This Court will not reverse where the right result is reached for the wrong reason. *Detroit v Presti*, 240 Mich App 208, 214; 610 NW2d 261 (2002). Review by this Court will be in accordance with the de novo standard of review for a motion under MCR 2.116(C)(10). *Kefgen v Davidson*, 241 Mich App 611, 616; 617 NW2d 351 (2000). A motion for summary disposition under MCR 2.116(C)(10) tests the factual sufficiency of the complaint. *Corley v Detroit Bd of Ed*, 470 Mich 274, 278; 681 NW2d 342 (2004). When deciding a motion for summary disposition, a court must consider the pleadings, affidavits, depositions, admissions and other documentary evidence submitted in the light most favorable to the nonmoving party. *Id.* A motion for summary disposition pursuant to MCR 2.116(C)(10) may be granted when the moving party is entitled to judgment as a matter of law, or the affidavits or other proofs show that there is no genuine issue of material fact. *Morales v Auto Owners Ins Co*, 458 Mich 288, 294; 582 NW2d 776 (1998). Review is limited solely to the evidence that had been presented to the trial court at the time the motion was decided. *Pena v Ingham County Road Comm*, 255 Mich App 299, 313 n 4; 660 NW2d 351 (2003).

III. ANALYSIS

A. Statute of Frauds

Plaintiff argues that the trial court erred in determining that the statute of frauds applied to the alleged Agreement between the parties. Specifically, plaintiff contends that the trial court's ruling is contrary to the controlling law, which limits the application of the statute of frauds to cases in which the agreement cannot be performed within one year. We disagree.

We agree with the trial court's ruling that the statute of frauds applied. We find that the trial court's decision is not contrary to the controlling law. The applicable statute of frauds provides, in pertinent part:

> In the following cases an agreement, contract, or promise is void unless that agreement, contract, or promise, or a note or memorandum of the agreement, contract, or promise is in writing and signed with an authorized signature by the party to be charged with the agreement, contract, or promise:
>
> (a) An agreement that, by its terms, is not to be performed within 1 year from the making of the agreement. [MCL 566.132(1).]

To determine if claims are barred by the one-year limitation of the statute of frauds**,** the court must determine whether the oral contract is capable, by any possibility, of performance within one year of the agreement. *Dumas v Auto Club Ins Ass'n*, 437 Mich 521, 533; 473 NW2d 652 (1991). If there is any possibility that an oral contract may be completed within a year, the agreement is not within the statute of frauds, even if the parties intended and thought it probable that it would extend over a longer period. *Hill v General Motors Acceptance Corp*, 207 Mich App 504, 509-510; 525 NW2d 905 (1994), quoting *Drummey v Henry*, 115 Mich App 107, 111; 320 NW2d 309 (1982). Plaintiff argues that a Memorandum written on October 24, 1994 ("the 1994 Memorandum") evidences the alleged Agreement between plaintiff and defendant. Relying on *Dumas, supra, Hill, supra,* and *Drummey, supra,* plaintiff contends that the 1994 Memorandum could have been performed within one year if the following triggering events happened during that time: plaintiff could have converted from the Comfort Inn franchise to

another franchise; plaintiff's and defendant's franchisor, Choice Hotels ("Choice Hotels"), could have taken away plaintiff's franchise; and either plaintiff or defendant could have sold their interests in the hotels within the first year. Therefore, plaintiff contends that its claims were not barred by the statute of frauds.

First, this case is distinguishable from *Dumas*, *Hill*, and *Drummey*, because there is no evidence of an oral contract or promise made between plaintiff and defendant. The 1994 Memorandum was executed by defendant and it preceded the execution of the Quality Inn Franchise Agreement between defendant and Choice Hotels in 1994. The 1994 Memorandum only recites the following concessions made by Choice to defendant for "switching from Comfort to Quality": "Choice Hotels pays for defendant's signage; 0% fees until Quality Lovonia [sic] is out of system; 3% royalties for life, and no marketing fees during the first year and no marketing fees during the second year unless defendant achieves or exceeds the performance." The 1994 Memorandum makes no mention of plaintiff or any alleged promise made by defendant. As such, we hold that the 1994 Memorandum does not evidence the existence of an alleged Agreement between the parties.

Moreover, even if the 1994 Memorandum evidences an alleged Agreement between the parties, it falls within the statute of frauds because it was incapable of performance within one year. *Dumas, supra* at 533. The record shows that the trial court properly made this preliminary analysis and ruled that the alleged Agreement could not have been accomplished within one year. The 1994 Memorandum states that defendant would pay no marketing fees during the second year unless defendant achieves or exceeds performance. Because the 1994 Memorandum contemplates contractual obligations for a period in excess of one year, it is within the statute of frauds. Also, we note that plaintiff misstates the record. Contrary to plaintiff's assertion on appeal, the 1994 Memorandum does not provide that defendant would not become a Comfort Inn for as long as plaintiff was in the system as a Comfort Inn. Thus, the alleged triggering events, including the conversion of plaintiff's Comfort Inn to another franchise, would not have terminated the alleged Agreement. As such, we conclude that the trial court did not err in holding that the statute of frauds applied.

B. MCR 2.116(C)(7)

Plaintiff next argues that although defendant did not move for summary disposition under MCR 2.116(C)(7), defendant's motion was more appropriately based on MCR 2.116(C)(7) (claim barred by statute of frauds). Plaintiff thus contends that, pursuant to MCR 2.116(C)(7), the trial court should have accepted plaintiff's allegations of the existence and terms of the Agreement between the parties as true when deciding defendant's motion. We disagree. Beyond plaintiff's allegations, there is insufficient evidence of an alleged Agreement between the parties to support plaintiff's breach of contract claim against defendant. Consequently, upon a de novo review, we conclude that the trial court properly granted defendant's (C)(10) motion for summary disposition. None of the documents produced by the parties supports plaintiff's allegations that an alleged Agreement existed between plaintiff and defendant or that Choice Hotels conducted negotiations and entered into the Quality Inn Franchise Agreement with defendant on behalf of plaintiff. Contrary to plaintiff's contention, the 1994 Memorandum does not mention that Robert Hazard, the president of Choice Hotels, was acting as plaintiff's agent or broker when making the Quality Inn Franchise Agreement with defendant. Considering all the documents in the light most favorable to plaintiff, the trial court properly found that because

there was no evidence of a written agreement or direct relationship between the parties, plaintiff sued the wrong party. *Corley, supra* at 278. Therefore, we hold that summary disposition was proper.

C. Third-Party Beneficiary

Plaintiff further maintains that even if the alleged Agreement was between defendant and Choice Hotels, the trial court ignored plaintiff's allegation that plaintiff was a third-party beneficiary to that Agreement under Michigan's third-party beneficiary statute, MCL 600.1405, and thus, entitled to enforce that Agreement. A party is a third-party beneficiary if the promisor "has undertaken to give or do or refrain from doing something directly to or for said person." MCL 600.1405(1). To support its argument, plaintiff misstates that "Quality Lovonia [sic]" in the 1994 Memorandum refers to plaintiff, Livonia Hospitality. It is clear from the record, however, that the 1994 Memorandum and the following Quality Inn Franchise Agreement do not make any reference to plaintiff or its relationship with defendant. Thus, we find no merit in plaintiff's third-party beneficiary argument.

D. Merger and 1994 Memorandum

Plaintiff next contends is that, even if the trial court correctly held that the statute of frauds applied, the 1994 Memorandum, as merged with other documents, evidences a contract between plaintiff and defendant, thus satisfying the writing requirement of the statute of frauds, MCL 566.132(1)(a). We disagree.

The "note or memorandum" involved here is the 1994 Memorandum. Consequently, the 1994 Memorandum must sufficiently set forth the essential terms of the agreement to satisfy the statute of frauds and thus render the alleged contract enforceable. *Opdyke Investment Co v Norris Grain* Co, 413 Mich 354, 369; 320 NW2d 836 (1982). This Court follows a case-by-case approach in determining compliance with the statute of frauds. *Forge v Smith*, 458 Mich 198, 206; 580 NW2d 876 (1998). "Some note or memorandum having substantial probative value in establishing the contract must exist; but its sufficiency in attaining the purpose of the statute depends in each case upon the setting in which it is found." *Opdyke Investment Co, supra* at 368, quoting *Goslin v Goslin*, 369 Mich 372, 376; 120 NW2d 242 (1963) (internal quotation marks omitted). Parol and extrinsic evidence may be used to supplement, but not contradict, the terms of the written agreement. *Id.* at 367.

Applying these legal principles to the present facts, we find that the 1994 memorandum was not a sufficient writing to satisfy the statute of frauds. The one-page 1994 Memorandum only recites the concessions made by Choice Hotels to defendant in exchange for defendant switching to a Quality Inn. The 1994 Memorandum clearly states that it was written between defendant and Choice Hotels "as a reminder in the future as proof to all the functionary's in Choice when we bill them for the signs, get billed for lower fees, etc." The 1994 Memorandum does not refer to plaintiff or establish any essential terms related to the alleged Agreement between plaintiff and defendant. Also, the 1994 Memorandum preceded the Quality Inn Franchise Agreement, which only bound defendant and Choice Hotels, not plaintiff. Moreover, no other documents refer to the alleged Agreement between plaintiff and defendant. Thus, in applying the statute of frauds with "intelligence and discrimination," it is clear that the 1994 Memorandum as well as the surrounding documents do not have substantial probative value in

establishing that the alleged Agreement between plaintiff and defendant exists. *Opdyke, supra* at 369; *Goslin, supra* at 376. Therefore, we conclude that the writing requirement of the statute of frauds was not satisfied.

E. Equitable Estoppel

Plaintiff next argues that even if the statue of frauds applied and was unsatisfied, defendant is equitably estopped from asserting the statute of frauds on the basis of defendant's conduct. We disagree.

"Equitable estoppel is not an independent cause of action, but instead a doctrine that may assist a party by precluding the opposing party from asserting or denying the existence of a particular fact. Equitable estoppel may arise where (1) a party, by representations, admissions, or silence intentionally or negligently induces another party to believe facts, (2) the other party justifiably relies and acts on that belief, and (3) the other party is prejudiced if the first party is allowed to deny the existence of those facts." *Lakeside Oakland Dev, LC v H & J Beef Co*, 249 Mich App 517, 527; 644 NW2d 765 (2002), quoting *Conagra, Inc v Farmers State Bank*, 237 Mich App 109, 140-141; 602 NW2d 390 (1999). This Court should look at the totality of the factual circumstances, including the parties' representations, in determining whether the equitable estoppel doctrine bars a statute of frauds argument. *Lakeside Oakland, supra* at 529. "Estoppel questions should be presented to the jury where factual issues exist regarding whether a party is estopped from raising the statute of frauds defense against a party who reasonably and justifiably relied on an oral agreement." *Id.* at 527.

Plaintiff contends that defendant promised to remain a Quality Inn for as long as plaintiff operated its hotel as a Comfort Inn. To the contrary, plaintiff failed to show that defendant induced it to believe such a promise. Plaintiff did not produce any document evidencing a communication or oral agreement between plaintiff and defendant. The documents only show the contacts between defendant and Choice Hotels and the contacts between plaintiff and Choice Hotels. At most, defendant's contacts with Choice Hotels could only induce Choice Hotels to grant it a Quality Inn franchise, and any reliance by plaintiff should be on Choice Hotels' act. As such, there was no factual issue regarding whether plaintiff reasonably and justifiably relied on defendant's act. *Lakeside Oakland, supra* at 527. Under the circumstances, we hold that plaintiff did not present evidence in support of application of the doctrine of equitable estoppel. *Id.* at 529.

In addition, plaintiff argues that, pursuant to *Brummel v Brummel*, 363 Mich 447; 109 NW2d 782 (1961), the doctrine of equitable estoppel applies when a party in reliance on the oral contract performed its obligation. Plaintiff alleges that, in reliance on defendant's promise, plaintiff fully performed its obligation by withdrawing its objection to defendant's entry in the Choice Hotels system as a Quality Inn in 1994. Plaintiff's reliance on *Brummel* is misplaced, however, because *Brummel* involves an oral contract to convey land. While the part performance exception to the statute of frauds in cases involving land has been approved, our Supreme Court has declined to recognize that the part performance doctrine removes a contract from the statute of frauds regarding contracts not to be performed within one year. See *Dumas, supra* at 540-541 (Riley, J.); *Ordon v Johnson*, 346 Mich 38, 46; 77 NW2d 377 (1956); *Whipple v Parker*, 29 Mich 369 (1874). As such, plaintiff's claim for equitable estoppel has no merit and

the trial court properly granted defendant's motion for summary disposition. *Dressel*, *supra* at 561.

F. Discovery

Finally, plaintiff contends that the trial court's summary disposition ruling under MCR 2.116(C)(10) was premature because plaintiff had not yet deposed defendant's representatives. Plaintiff argues that, at a minimum, defendant's motion should have been deferred until plaintiff had a full and fair opportunity to depose defendant's representatives. We disagree.

A review of the record shows that all written documents had been produced and there was no document evidencing an alleged Agreement between the parties. The trial court granted defendant summary disposition on the basis that the statute of frauds bars plaintiff's claims because there was no written agreement between the parties. In light of the trial court's correct application of the statute of frauds, the fact that plaintiff had not yet deposed defendant's representatives has no bearing or effect on the propriety of the court's dismissal of plaintiff's claims.

To the extent that plaintiff suggests that defendant impeded plaintiff's efforts to depose defendant's representatives, our review of the record in this case substantiates no misconduct by defendant that precluded a deposition. As such, we hold that defendant's claim has no merit.

Affirmed.

/s/ Donald S. Owens
/s/ E. Thomas Fitzgerald
/s/ Bill Schuette